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Doc. No. 307658 WEMHH/SB/21 (6/04)

Approved for use through 07/31/2006. OMB 0651-0031

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|---|------------------------|--------------------|
| TRANSMITTAL FORM (to be used for all correspondence after initial filing) | Application Number | 10/763,719 |
| | Filing Date | January 23, 2004 |
| | First Named Inventor | Thomas Zdeblick |
| | Art Unit | 3738 |
| | Examiner Name | Alvin J. Stewart |
| Total Number of Pages in This Submission | Attorney Docket Number | 4002-3456/PC261.21 |

| ENCLOSURES (Check all that apply) | | |
|---|--|--|
| <input checked="" type="checkbox"/> Fee Transmittal Form <input checked="" type="checkbox"/> Fee Attached (USPTO Credit Card Payment Form) <input checked="" type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53 | <input type="checkbox"/> Drawings <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) <input type="text"/> | <input type="checkbox"/> After Allowance communication to Group <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): Return Receipt Postcard |
| Remarks <input type="text"/> | | |

| SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT | |
|--|---|
| Firm or individual name | Brad A. Schepers, Reg. No. 45,431 Woodard, Emhardt, Moriarty, McNett & Henry LLP |
| Signature | |
| Date | October 8, 2004 |

| CERTIFICATE OF TRANSMISSION/MAILING | |
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| I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below | |
| Typed or printed name | Brad A. Schepers |
| Signature | |
| Date | October 8, 2004 |

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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OCT 12 2004

Doc. No. 307655 WEMMH/SB/17 (10/04)

OMB 0651-0032

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FEE TRANSMITTAL FOR FY 2004

Effective 01/01/2003. Patent fees are subject to annual revision.

☐ Applicant claims small entity status. See 37 CFR 1.27Total Amount of Payment (\$)**704.00****Complete if Known**

Application Number **10763,719**
 Filing Date **January 23, 2004**
 First Named Inventor **Thomas Zdeblick**
 Group Art Unit **3738**
 Examiner Name **Alvin J. Stewart**
 Attorney Docket Number **4002-3456/PC261.21**

METHOD OF PAYMENT

☐ Check ☒ Credit card ☐ Money Order ☐ Other ☐ None

☒ Deposit Account:Deposit
Account
Number

23-3030

Deposit
Account
NameWoodard, Emhardt, Moriarty,
McNett & Henry LLP

The Director is authorized to: (check all that apply)

☐ Charge fee(s) indicated below ☒ Credit any overpayments
☒ Charge any additional fee(s) during the pendency of this application, excluding the payment of issue fees

FEE CALCULATION**1. BASIC FILING FEE**

| Large Fee Code | Entity Fee (\$) | Small Fee Code | Entity Fee (\$) | Fee Description | Fee Paid |
|---------------------|-----------------|----------------|-----------------|------------------------|------------------------|
| 1001 | 790 | 2001 | 395 | Utility Filing Fee | |
| 1002 | 350 | 2002 | 175 | Design Filing Fee | |
| 1003 | 550 | 2003 | 275 | Plant Filing Fee | |
| 1004 | 790 | 2004 | 395 | Reissue Filing Fee | |
| 1005 | 160 | 2005 | 80 | Provisional Filing Fee | |
| SUBTOTAL (1) | | | | | (\$)0.00 |

2. EXTRA CLAIM FEES

| Total Claims | Extra Claims | Fee From Below | Fee Paid |
|---------------------------|--------------|----------------|----------|
| 35 | -49** = 0 | X | 0.00 |
| 13 | -5** = 8 | X | 88.00 |
| Multiple Dependent | | | |

(Four new claims to make a total of 23)

| Large Entity Fee Code | Entity Fee (\$) | Small Entity Fee Code | Entity Fee (\$) | Fee Description |
|-----------------------|-----------------|-----------------------|-----------------|---|
| 1202 | 18 | 2202 | 9 | Claims in excess of 20 |
| 1201 | 88 | 2201 | 44 | Independent claims in excess of 3 |
| 1203 | 300 | 2203 | 150 | Multiple dependent claim, if not paid |
| 1204 | 88 | 2204 | 44 | **Reissue independent claims over original patent |
| 1205 | 18 | 2205 | 9 | **Reissue claims in excess of 20 and over original patent |

SUBTOTAL (2) (\$)704.00****

**or number previously paid, if greater; For Reissues, see above

FEE CALCULATION (continued)**3. ADDITIONAL FEES**

| Large Entity | | Small Entity | | Fee Description | Fee Paid |
|--------------|----------|--------------|----------|--|----------|
| Fee Code | Fee (\$) | Fee Code | Fee (\$) | | |
| 1051 | 130 | 2051 | 65 | Surcharge - late filing fee or oath | |
| 1052 | 50 | 2052 | 25 | Surcharge - late provisional filing fee or cover sheet. | |
| 1053 | 130 | 1053 | 130 | Non-English specification | |
| 1812 | 2,520 | 1812 | 2,520 | For filing a request for <i>ex parte</i> reexamination | |
| 1804 | 920* | 1804 | 920* | Requesting publication of SIR prior to Examiner's Action | |
| 1805 | 1,840* | 1805 | 1,840* | Requesting publication of SIR after Examiner's Action | |
| 1251 | 110 | 2251 | 55 | Extension for reply within first month | |
| 1252 | 430 | 2252 | 215 | Extension for reply within second month | |
| 1253 | 980 | 2253 | 490 | Extension for reply within third month | |
| 1254 | 1,530 | 2254 | 765 | Extension for reply within fourth month | |
| 1255 | 2,080 | 2255 | 1,040 | Extension for reply within fifth month | |
| 1401 | 340 | 2401 | 170 | Notice of Appeal | |
| 1402 | 340 | 2402 | 170 | Filing a brief in support of an appeal | |
| 1403 | 300 | 2403 | 150 | Request for oral hearing | |
| 1451 | 1,510 | 1451 | 1,510 | Petition to institute a public use proceeding | |
| 1452 | 110 | 2452 | 55 | Petition to revive - unavoidable | |
| 1453 | 1,370 | 2453 | 685 | Petition to revive - unintentional | |
| 1501 | 1,370 | 2501 | 685 | Utility issue fee (or reissue) | |
| 1502 | 490 | 2502 | 245 | Design issue fee | |
| 1503 | 660 | 2503 | 330 | Plant issue fee | |
| 1460 | 130 | 1460 | 130 | Petitions to the Commissioner | |
| 1807 | 50 | 1807 | 50 | Petitions related to provisional applications | |
| 1806 | 180 | 1806 | 180 | Submission of Information Disclosure Stmt | |
| 8021 | 40 | 8021 | 40 | Recording each patent assignment per property (times number of properties) | |
| 1809 | 790 | 2809 | 395 | Filing a submission after final rejection (37 CFR 1.129(a)) | |
| 1810 | 790 | 2810 | 395 | For each additional invention to be examined (37 CFR 1.129(b)) | |
| 1801 | 790 | 2801 | 395 | Request for Continued Examination (RCE) | |
| 1802 | 900 | 1802 | 900 | Request for expedited examination of a design application | |

Other Fee (specify)

* Reduced by Basic Filing Fee Paid

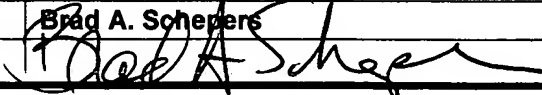
SUBTOTAL (3) (\$)0.00******SUBMITTED BY:**Name (Print/Type): **Brad A. Schepers**Registration No.:
(Attorney/Agent)**45,431**Telephone: **(317) 634-3456**Signature: Date: **October 8, 2004****CERTIFICATE OF MAILING OR TRANSMISSION**

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Name (Print/Type)

Brad A. Schepers

Signature



Date

October 8, 2004



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application of:
Thomas Zdeblick et al.

Application Serial No. 10/763,719

Filed January 23, 2004

METHODS AND INSTRUMENTS
FOR INTERBODY FUSION

) Before the Examiner
) Alvin J. Stewart
)

) Group Art Unit 3738
)

) Ref. No. PC261.21/
) 4002-3456
)

) October 8, 2004
)

RESPONSE TO FIRST OFFICE ACTION

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the first Office Action dated July 20, 2004, please enter and consider the following amendments and remarks. Additionally, please provide any extensions of time necessary and charge any additional fees which may be necessary to Deposit Account No. 23-3030, but not to include any payment of issue fees.

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October 8, 2004

Date of Deposit

Brad A. Schepers

Name of Registered Representative

Signature

October 8, 2004

Date of Signature

10/13/2004 HEUTEHAI 00000047 10763719

704.00 0P

01 FC:1201

INTRODUCTORY COMMENTS

Claims 14-28 and 38-71 were pending in the subject application for the first Office Action dated July 20, 2004. Claims 24-28 have been withdrawn from consideration as being directed to patentably distinct species of the claimed invention.

The Applicant has cancelled the withdrawn claims 24-28 from the subject application without prejudice for possible consideration in a continuing application. Claims 14, 38 and 56-62 have also been cancelled from the subject application without prejudice for possible consideration in a continuing application. In view of the following amendments and remarks, reconsideration and allowance of the subject application are hereby requested.